IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

OP.No. 12618 of 2003(B)

PETITIONER:

K.K. CHANDRASEKHAR,
MANAGING PARTNER,
HOTEL RUKMINI, ANGAMALY.

BY ADV. SRI.PKM.HASSAN
SRI.FIROZ K.ROBIN

RESPONDENTS:
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1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VYDYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM.

2. EXECUTIVE ENGINEER,
KERALA STATE ELECTRICITY BOARD,
ELECTRICAL DIVISION,
PERUMBAVOOR.

3. ASST. EXECUTIVE ENGINEER,
ELECTRICAL MAJOR SECTION,
ANGAMALY.

BY ADV. SRI.C.K.KARUNAKARAN, SC, KSEB

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 27/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.21458/2003 IN O.P. NO.12618/2003

DISMISSED:

27.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONERS' EXHIBITS:

P1: TRUE COPY OF THE BILL DT.23.7.2002 ISSUED BY ROYAL LIGHTS FOR AN AMOUNT OF RS.16,900/-.

P2: TRUE COPY OF PENALTY BILL DT.16.8.2002.

P3: TRUE COPY OF MAHAZAR DT.7.8.2002.

P4: TRUE COPY OF PETITION/APPEAL DT.8.8.2002 FILED BY PETITIONER BEFORE R2.

P5: TRUE COPY OF LETTER DT.11.3.2003 ISSUED BY R2 TO R3 WITH A COPY TO THE PETITIONER.

P6: TRUE COPY OF THE BOARD ORDER DT.15.1.2003 FIXING THE LIABILITY ONLY ON FIXED CHARGES AND NOT ON ENERGY CHARGES.

P7: TRUE COPY OF JUDGMENT DT.31.3.2003 IN O.P. NO.10928/2003.

P8: TRUE COPY OF LETTER/PROCEEDINGS DT.2.4.2003 ISSUED BY R3 TO THE PETITIONER.

P9: TRUE COPY OF INVOICE DT.31.3.2003.

P10: TRUE COPY OF LETTER DT.7.4.2003 ADDRESSED TO COUNSEL FOR PETITIONER.

P11: TRUE COPY OF THE ORDER PASSED BY CHIEF ELECTRICAL INSPECTOR, GOVT. OF KERALA, TRIVANDRUM ON 24.8.93.

P12: TRUE COPY OF BOARD ORDER DT.2.2.99.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR,J.

O.P. NO.12618 OF 2003

Dated this the 27th day of March, 2007

JUDGMENT

Heard counsel for the petitioner and standing counsel for KSEB. Petitioner is challenging additional electricity bill raised after inspection in petitioner's hotel made on 7.8.2002 wherein addl. 7 KW unauthorised load was detected. Even though appeal was filed against the penal bill, the Executive Engineer granted only minor reduction that is by excluding from unauthorised load certain connections in the idle plugs. Counsel for the petitioner relying on purchase bill produced as Ext.P1 showing the purchase of five water heaters by petitioner on 23.7.2002 submitted that the purchase of these water heaters were a few days prior to the date of inspection and therefore penal charges for unauthorised load attributable to water heaters should be limited to maximum one month. Petitioner's counsel also produced copy of judgment in O.P.No. 14447 of 1999 wherein this Court following the judgment of the Division Bench in W.A.No. 1231 of 2005 held that penal charges for unauthorised load should be limited to fixed charges

and not engergy charges because entire consumption is recorded in the meter. Standing counsel for KSEB on the other hand contended that the provision under clause 42(d) of the conditions of Supply is not intended to cover any consumption of power went unrecorded, but it is only a provision to charge penal rates for actual consumption for unauthorised load. When the Division Bench has held that penal charges under clause 42(d) for unauthorised load has to be limited to fixed charges, I feel there is no scope for turning down the claim of the petitioner. So far as acceptability of ext.P1 purchase bill is concerned, I do not think there is any need to go into the same because petitioner is otherwise getting relief by exclusion of penal charges on power consumption. O.P. is accordingly allowed vacating the penal bill and order in appeal of the Executive Engineer with direction to the third respondent to revise the penal bill on fixed charges for addl. unauthorised load. Payment already made by the petitioner will be adjusted towards immediate future bills.

(C.N.RAMACHANDRAN NAIR)
Judge